IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 47 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRAKUMAR MANEKLAL (HUF)

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR KI SHAH for Applicant.

MR BB NAYAK FOR MR MR BHATT for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question has been referred for the opinion of this Court in respect of the assessment year 1975-76 :

"Whether, the dividend income in respect of the shares of Calico Mills and Gujarat Ginning Mills was taxable in the hands of the assessee HUF specially when the question of partial partition was still pending final adjudication ?"

2 Earlier the parties had come up to this Court. When the C.I.T.(Appeals) condoned the delay and partly allowed the appeal filed by the assessee, the Tribunal interfered with that order. However, this Court set aside the order of the Tribunal and restored the order of C.I.T.(Appeals) in condoning the delay. The controversy between the parties on merits was therefore required to be resolved by C.I.T.(Appeals). The controversy was about validity of the partial partition. The learned Counsel for the parties are not in a position to state as to whether the controversy has been finally resolved or not. For want of definite information on that question we decline to answer the question referred in this reference and remand the matter to the Tribunal for deciding the controversy which is the subject matter of the present reference in light of the decision on the question of partial partition.

3 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)
m.m.bhatt